IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.37 of 1998
Date of Decision:17.01.2007

Commissioner of Income-Tax, Patiala

.....Petitioner

Vs.

Javinder Singh Kabari, Patiala

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Yogesh Putney, Advocate for the revenue.

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Rajesh Bindal, J.

The following question of law has been referred for opinion of this Court arising out of order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, `the Tribunal') in I.T.A. No.75/Chandi/93 dated 11.8.1997 in respect of assessment year 1986-87:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in cancelling the penalty u/s 271(1)(c) in respect of the addition of Rs.35,000/- expended by the assessee on a foreign tour and confirmed by it in quantum appeal?"

During the course of assessment, the Assessing Officer made additions to the extent of Rs. 56,500/- on different accounts in addition to the returned income of Rs. 17,880/- and as a consequence issued notice under Section 271(1)(c) of the Income Tax Act, 1961 (for short, `the Act') and levied a penalty of Rs. 38,000/- which worked out to 200% of the amount of tax sought to be evaded. In appeal, in quantum proceedings, additions to the extent of Rs. 21,500/- were deleted, however, the additions of Rs. 35,000/- were upheld and the penalty was consequently reduced. The penalty as levied was upheld by Commissioner of Income Tax(Appeals) vide order dated October 19, 1992. In further appeal by the assessee, the plea of the assessee was accepted by the Tribunal, which observed that

the penalty proceedings are quite distinct from assessment proceedings. Merely because additions have been upheld, it does not automatically entails levy of penalty unless mens rea is proved. The Tribunal in the given fact situation, having examined the facts, has come to the conclusion that the penalty was not leviable in the facts and circumstances of the case. The satisfaction being subjective even if there are two opinions possible on the same facts, the view taken by the Tribunal cannot be held to be perverse. Learned counsel for the revenue could not point out that the view taken by the Tribunal is not a possible view.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

(RAJESH BINDAL)
JUDGE

January 17, 2007 **(M.M.KUMAR)**
renu **JUDGE**